



The Speaker of the National Assembly
Honourable B Mbete MP
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Your Ref:
Our Ref: Mr. ET Mabuza
Date: Thursday, April 06, 2017

Dear Madam

URGENT: Motion of No-Confidence scheduled for 18 April 2017

1. We act for one of the minority parties represented in the National Assembly, namely the United Democratic Movement (“our client”). Our client has provided us with your response to its request to the Honourable Speaker to arrange an urgent sitting of Parliament in order to move a motion of No-Confidence in the President of the Republic of South Africa, Honourable JG Zuma.
2. On behalf of our client, we thank you for acceding to our client’s and other opposition parties’ requests, with relative urgency, by indicating that such a sitting will indeed take place at 14h00 on 18 April 2017, ie some 12 calendar days and only 5 court days from the date of this letter.
3. We are instructed to write this letter to demand, as we hereby do, that the Honourable Speaker should agree with our client’s proposal that the Motion of No-Confidence be determined by way of secret ballot, *inter alia*, for the following reasons:
 - 3.1. Due to the obvious importance of the issue at hand, it is in the public interest imperative that a truly democratic outcome be guaranteed.

- 3.2. There is, in the prevailing circumstances, a high likelihood that the vote would otherwise be tainted by the (understandable) fear of adverse and career-limiting consequences rather than the free will of the voters.
- 3.3. The South African Constitution contains, *inter alia*, the underlying values of democracy, accountability and freedom, all of which operate in favour of seeking to obtain the most democratic outcome in relation to this particular vote.
- 3.4. All members of the National Assembly have taken an oath or affirmation to be “*faithful to the Republic of South Africa and (to) obey, respect and uphold the Constitution and all other laws of the Republic ...*”.
- 3.5. The aforesaid oath is a compulsory prerequisite to membership of the National Assembly, in that section 48 of the Constitution provides that:

“Before members of the National Assembly begin to perform their functions in the Assembly, they must swear or affirm faithfulness to the Republic and obedience to the Constitution.”
- 3.6. Our client is only represented by three members of Parliament out of 400 and is desirous and deserving of all the possible protections which the Constitution can provide.
- 3.7. Our client has reason to believe that the outcome of the vote might otherwise be unduly tainted by allegiance to extraneous considerations other than “*faithfulness to the Republic and obedience to the Constitution*”. In particular, our client is in possession of audio-visual evidence of intimidatory tactics aimed at the voters by senior members of the ruling ANC, including recent statements made by one David Mabuza, a very senior provincial official of the ANC, that those who may vote in favour of the motion will be expelled from Parliament. This would defeat the purpose of even holding the vote.
- 3.8. Although both the relevant Rules of the National Assembly and the Constitution are admittedly silent on the method of voting during section 102 proceedings, there is no prohibition of a secret ballot either. On the contrary, the following provisions of the Constitution are relied upon by our client as cumulatively

providing, albeit indirectly, sufficient guidance in favour of granting its proposal or request for a secret ballot in this case:

3.8.1. Section 57(1)(a) of the Constitution, read with Rule 2 of the Rules of the National Assembly, which provides that:

“The National Assembly may determine its internal arrangements, proceedings and procedures.”

3.8.2. Section 57(2)(b) of the Constitution, which provides that:

“The rules and orders of the National Assembly must provide for the participation in the proceedings of the Assembly and its committees of minority parties represented in the Assembly, in a manner consistent with democracy.”

3.8.3. Section 86(2) of the Constitution, which provides that:

“The Chief Justice must preside over the election of the President or designate another judge to do so. The procedure set out in Part A of Schedule 3 applies to the election of the President.”

3.8.4. Crucially, clause 6(a) of Part A of Schedule 3, which provides that:

“If more than one candidate is nominated (for the position of President) a vote must be taken at the meeting by secret ballot.”

(Our emphasis)

3.9. The new and more extensive grounds relied upon hereinabove render this matter to be clearly distinguishable from the decided case of ***Tlouamma v The Speaker*** 2016 (1) SA 534, in which reliance was solely placed on Rule 2 of the Rules of the National Assembly.

3.10. It is in the public interest that our client’s proposal be accepted.

4. In spite of the foregoing and due to the Speaker’s very senior position in the ruling party, as well as her past conduct, attitude and disposition towards the issue of voting

by secret ballot, our client suspects that the Speaker is most likely to automatically reject our client's proposal.

5. Due to the self-evident urgency of this matter, given the timeframes, it is our instruction to demand that you apply your mind to the above, favour us with a response, one way or the other, as a matter of extreme urgency, but preferably not later than 10h00 on Friday 7 April 2017, indicating that you will accede to our client's request, failing all of which our instructions are to proceed without any further notice to you to take all the necessary steps to protect the rights of our client, its members, its voters and the South African public. Such steps may include but not be limited to:
 - 5.1. bringing urgent proceedings in the Constitutional Court or any other appropriate forum; and
 - 5.2. as a last resort, subsequently appealing directly to the Chief Justice, strictly in his capacity as the designated "*electoral officer*" to make rules, as he is peremptorily enjoined to do in terms of Clause 9 of Part A of Schedule 3, "*prescribing the procedure for meetings to which this schedule applies*".
6. Kindly note that this letter has been deliberately written with detail so as to elucidate the main legal bases which will be relied upon in the event of litigation and so as to enable your legal representatives to prepare answers to those legal grounds, even while the founding papers will be in the process of being prepared. In the first instance, such detail is provided so as to assist you to reach a rational decision after due application of the mind.
7. We await your urgent response on or before the time referred to in paragraph 5 above.

Yours faithfully



MABUZA ATTORNEYS